

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.CR.C.(A). No. 231 of 2016

1. Prakash Davara, aged about 64 years, S/o. Shri Maganlal Davara, R/o. Gitanjali Nagar, Raipur, District – Raipur (C.G.)

----Applicant

Versus

1. State of Chhattisgarh, Through : Station House Officer, Police Station – Gudhiyari, Raipur, District- Raipur (C.G.)

---- Respondent

For Applicant : Mr. Y.C. Sharma, Advocate

For Respondent/State : Mr. Anupam Dubey, Dy.Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

21/03/2016

1. Apprehending arrest in connection with Crime No.103/2012 registered at Police Station- Gudhiyari, Raipur, District – Raipur (C.G.), for offence punishable under Section 420 of the Indian Penal Code and Section 292 (G) (3) of Municipal Corporation Act, the applicant has preferred this application for grant of anticipatory bail.
2. As per the prosecution case, a report was made by the Zone Commissioner while Raipur Development Authority was under the Municipal Corporation that the applicant, who is the Secretary of the Gitanjali Co-operative Housing Society Limited while developing the colony, the applicant had mortgaged five plots for development of the colony and without the development having been carried out, the mortgage plots were sold, therefore, it would be 420 and illegally developed the colony.
3. Learned counsel for the applicant would submit that to follow up, the report was made after the Raipur Development Authority (RDA) has lost in Civil Appeal No.5769-5770 of 2015 before the Hon'ble

Supreme Court, wherein certain acts of the RDA was set-aside. He would further submit that even otherwise taking into the fact that the agreement which is placed on record as Annexure A/3 was of 1982, which do not contemplate the creation of mortgage and only agreed to mortgage and it has used the word has to mortgage. He would further submit that the development was completely carried out, which would be evident from the note-sheet of the RDA, which is on record, which would show that on physical verification it was found that development of road, drain and light has been carried out by the applicant in the Gitanjali Co-operative Housing Society Limited, therefore, submits that under these circumstances, the applicants have been falsely implicated in this case as no offence is being made out, therefore, the counsel prays that the applicant may be extended the benefit of anticipatory bail.

4. Per contra, the State counsel opposes the bail application and would submit that the applicant has sold the mortgaged plots thereby has committed the offence in view of the C.G. Nagar Palika Sansodhan Adhiniyam, 2011.
5. Perused the case diary and the documents filed along-with this bail application. Perusal of the documents would show that in the year 1982, an agreement was entered between the Gitanjali Co-operative Housing Society Limited and Raipur Development Authority, wherein it was agreed that first party has to mortgage five plots of different measurement. Except to create the mortgage, no other documents is on record in the case diary. Further more the note-sheet of the RDA would show that on application filed by the applicant, to release the few of the plots, which was physically verified and according to the note-sheet of the RDA, it is noted that necessary development of the road, drain and light has been

carried out, therefore, considering the documents and the fact that after 32 years of the initial agreement, alleged offence has been reported. Considering the case diary, this Court is inclined to extend the benefit of anticipatory bail to the applicant.

6. Accordingly, the anticipatory bail application is allowed and it is directed that in the event of arrest of the applicant in connection with the aforesaid offence, he shall be released on bail by the officer arresting him on executing a personal bond in sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned Investigating Officer. The applicant shall also abide by the following conditions :

- (i) that the applicant shall make himself available for interrogation before the investigating officer as and when required;
- (ii) that the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer;
- (iii) that the applicant shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- (iv) that the applicant shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

Certified copy as per rules.

Sd/-
(Goutam Bhaduri)
Judge